

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5616 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYANTILL MOTIBHAI PARMAR

Versus

EXECUTIVE ENGINEER

Appearance:

MR PB SHARMA for Petitioner

UNSERVED AS REFUSED for Respondent No. 1

Mr. N.D.Gohil, Asstt. GP DS for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/06/97

ORAL JUDGEMENT

Petitioner herein is a daily wager labourer under the respondents who claims reinstatement in service and regularization as a permanent employee pursuant to the Government Resolution dated 17th October, 1988.

2. It is the case of the petitioner that the

petitioner was engaged as a daily wager labourer since December, 1982 and had continuously worked till 1987. It is his contention that during the said period, he has served as such for more than five years and in each year, he has served for more than 240 days. In the month of October, 1987, his service was terminated. Feeling aggrieved, the petitioner preferred petition being special civil application No. 747 of 1988 before this Court. This Court, under its order dated 12th October, 1990, recorded a statement made on behalf of the respondents that the labour was available and the petitioner would be engaged wherever work may be available. However, it is the claim of the petitioner that inspite of the said statement, respondent No. 1 directed the petitioner to report for duty at distant places where the petitioner could not reach and report for duty. Thus, the petitioner was restrained from reporting for duty which resulted into his absence. Since 1992, the petitioner was discontinued. Feeling aggrieved, the petitioner preferred special civil application No. 11192 of 1994 before this Court. Said petition was disposed of on 25.10.1994. The Court recorded a statement made on behalf of the respondents that the petitioner was instructed to report for duty before the concerned overseer at Gandhinagar. However, the petitioner didnot respond to the said communication and thereupon the petitioner assured the Court that the petitioner would report for duty on 7th November, 1994. The petition was accordingly disposed off. Now, it is the grievance of the petitioner that he was directed to report for duty at a distant place where he could not report for duty and, thus, the petitioner is being deprived of his livelihood and employment.

3. The claim made by the petitioner is contested by the respondent No. 1 by filing affidavit in reply to the petition. It is denied that the petitioner worked for 240 days continuously for five years from the year 1982 to 1987. It is contended that only in the years 1984 and 1985, the petitioner served for more than 240 days while during the years 1982, 1983, 1986 and 1987, number of days petitioner was engaged were far less than 240 days. It is further contended that since 1987, the petitioner did not report for duty of his own volition and that his service was never terminated as alleged by the petitioner. The petitioner was issued several notices by registered post inspite of which the petitioner did not report for duty till the year 1991. The petitioner was engaged as daily wager labourer during the year 1991 to 1994. However, during none of the said four years, he had served for more than 240 days. It is the case of the

respondents that since the petitioner has not completed 240 days' service continuously for a period of five years, his appointment cannot be regularized as directed under the Government Resolution dated 17th October, 1988. It is further contended that in the Gandhinagar township, the work was not available and the petitioner was instructed to report for duty at the place wherever the work may be available. However, the petitioner has insisted that he be engaged at Gandhinagar alone and has refused to report for duty at any other place.

4. In view of the above contentions, it may be noted that the facts stated by the petitioner are disputed. The petitioner has not been able to establish that he had worked for 240 days in a year continuously for a period of five years as averred by him. Further, it is also not established that the petitioner's service was terminated as alleged by him. In view of the aforesaid disputed questions of fact, this petition preferred under Article 226 of the Constitution cannot be decided. However, it shall be open to the petitioner to seek other remedy which may be available to him. Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

25.06.1997. *****

Vyas